

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NANCY STEVENSON, ¹	§	
	§	No. 558, 2005
Respondent Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
PETER SIMONS,	§	in and for Sussex County
	§	File No. CN00-08239
Petitioner Below,	§	Petition No. 04-20942
Appellee.	§	

Submitted: June 21, 2006

Decided: July 21, 2006

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 21st day of July, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) Nancy Stevenson (Mother) appeals from a Family Court decision granting primary residential custody of her daughter, Amy Simons, to Peter Simons (Father). Mother argues that: (i) the Family Court abused its discretion when it denied her motion for a continuance; (ii) the court erred when it refused to allow Mother to participate in the custody hearing by telephone; and (iii) the court's

¹The names of the parties and their child are pseudonyms adopted by the Court, *sua sponte*, pursuant to Supreme Court Rule 7(d).

findings are neither supported by the record or the product of logical and deductive reasoning. We find no merit to these arguments, and affirm.

2) Amy was born in Illinois in 1999, shortly before Mother and Father planned to begin college at the University of Delaware. When the parents started school, Amy lived with Father and Father's parents in Newark, Delaware. Mother lived in a dormitory on campus. In May 2000, Mother began seeing Amy for varying periods of time until March 2002, when Mother moved to Illinois. After mediation, the parents agreed to joint custody, with Mother having primary residence while living in Illinois.

3) In August 2002, Amy returned to live with Father in Delaware. At that time Mother was pregnant with her second child. Amy remained in Delaware until the spring of 2003, when Mother took her back to Illinois. In June 2004, Father filed the pending motion to modify custody, and in January 2005, following another mediation, the parties agreed to a temporary visitation schedule.

4) In April 2005, the Family Court conducted a pre-trial hearing. Mother participated by telephone. At the end of the pre-trial hearing, the court advised Mother that she would have to appear in person, with Amy, on September 27, 2005 for the custody hearing. Mother acknowledged that requirement, and also agreed that she would retain an attorney promptly.

5) On September 26, 2005, Mother faxed a letter to the court asking for a continuance. The reason she gave was that she was having difficulty arranging transportation from Illinois. On September 27, 2005, before the custody hearing began, the trial court considered Mother's request for a continuance, with Mother participating by telephone. The court asked Mother why she was not in Delaware. Her answer was that: (i) she did not have a valid driver's license; (ii) her fiancé had used all his vacation time and could not take time off work to drive her to Delaware; and (iii) she could not fly to Delaware because she would not be able to get from the airport to the courthouse. Mother admitted that she and her fiancé had driven to Delaware in August to attend a family wedding and take a vacation, but explained that that trip was pre-planned.

6) The trial court asked Mother whether, as a condition to granting the continuance, she would agree to let Father have custody of Amy until the next hearing date. Mother said no. The trial court then denied the request for a continuance. The court noted that Mother had been given ample time to arrange her travel plans and had been told that she would not be allowed to participate in the hearing by telephone. The court also noted that Father and all of his witnesses missed work to attend the hearing.

7) We review the trial court's decision not to grant a continuance for abuse of discretion.² Mother argues that she should have been given some leniency because she was a *pro se* litigant. She also contends that she had several major problems that prevented her from traveling to Delaware. We conclude that the trial court acted well within its discretion in denying Mother's motion for a continuance. She waited until the last minute to request it; she was able to get to Delaware a month earlier when she wanted to come to Delaware; and Father's family and other witnesses had taken time off from work to attend the scheduled hearing.

8) In a somewhat related argument, Mother contends that the trial court abused its discretion when, after denying her request for a continuance, it refused to allow Mother to participate in the hearing by telephone. Mother argues that she should have been allowed to participate by telephone because of the circumstances of the request and the magnitude of the decision that the court was about to make.

9) Again, we find no abuse of discretion. Mother had been told in April that she would have to appear in person in September. The trial court explained that it would have to assess credibility in the custody dispute and that it would not be able to do that over the phone. Mother apparently decided to take her chances -- by not

² *Weber v. Weber*, 1988 WL 93433 at *2 (Del.Supr.).

appearing in Delaware; filing a last minute motion for a continuance; and then hoping that, notwithstanding the court's prior admonition, she would be allowed to participate by telephone.

10) If, as Mother now claims, the decision before the court was one of great magnitude, then she should have found a way to get to Delaware for the hearing. Alternatively, she could have agreed to let Father have custody of Amy pending a rescheduled hearing. Since Mother's dilemma was largely one of her own making, the trial court's decision to proceed without her participation cannot be faulted.

11) Finally, Mother argues that the trial court's findings on the merits of the custody dispute were not supported by the record. As Mother acknowledges, the trial court evaluated the factors set forth in 13 *Del. C.* §722(a) to decide the custody and residential placement arrangements that would be in Amy's best interest. Mother contends that the trial court erred, however, because its analysis was based on an incomplete record.

12) This is but another version of Mother's two earlier arguments. She complains that the trial court did not hear evidence from her, Amy, or others whose input should have been considered in deciding on Amy's placement. We reject this argument for the reasons previously given. Although the record was not as complete as it might have been, the trial court heard evidence about Amy's life

with Father and Father's family, her living arrangements, school and community activities, etc. We affirm the trial court's custody decision on the basis of its well-reasoned decision.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/Carolyn Berger
Justice